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*Attorneys for Plaintiffs John F. Hutchens and Baby S.A.*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

JOHN F. HUTCHENS, et al.,

*Plaintiffs,*

v.

COUNTY OF ALAMEDA, et al.,

*Defendants.*

No. C 06-6870 SBA

JOHN F. HUTCHENS, et al.,

*Plaintiffs,*

v.

ALAMEDA COUNTY MEDICAL  
CENTER, et al.,

*Defendants.*

No. C 07-5600 SBA  
(Related Action)

**MOTION TO CONSOLIDATE  
ACTIONS**

[Rule 42, F.R.Civ.P and Local Rules  
7-1 through 7-5]

**Date: April 1, 2008**

**Time 1:00 p.m.**

**Dept: Courtroom 3, 3<sup>rd</sup> Floor**

TO: DEFENDANTS COUNTY OF ALAMEDA, RUDOLPHO HERNANDEZ,  
and ALAMEDA COUNTY MEDICAL CENTER:

PLEASE TAKE NOTICE THAT ON Tuesday, April 1, 2008 at 1:00 p.m., or as  
soon thereafter as the matter may be heard, in Courtroom 3 of the above-entitled court  
located at 1301 Clay Street, Oakland, California, before the Honorable Sandra B.  
Armstrong, Plaintiffs John F. Hutchens and Baby S.A. will hereby move the court  
pursuant to F.R. Civ. P., Rule 42(a)(2) to consolidate the two above-captioned cases.

Said motion is based on the fact that each case alleges a violations of plaintiffs' federal civil rights under Title 42 U.S.C. § 1983 and related state causes of actions, and both actions involve common questions of law and fact.

### DECLARATION OF COUNSEL

I, Frances S. Kaminer, declare,

1. I am an attorney at law duly admitted to practice in the state of California and before the U.S. District Court, Northern District of California and am an attorney of record for the plaintiffs John F. Hutchens and Baby S.A. named herein above in both actions.

2. An administrative motion to declare Case Nos. 06-6870 SBA and 07-5600 MJJ related and to consolidate the two cases was filed by plaintiffs John Hutchens and Baby S.A. on January 25, 2008. No opposition to the administrative motion was filed. On February 7, 2008, this court issued an order declaring the cases to be related, but did not rule on the request for consolidation.

3. The facts stated in the following memorandum of points and authorities section are the facts upon which plaintiffs base their complaints against all defendants named in both actions. Both actions involve common questions of law and fact. The actions arose at the same time and place and under the same circumstances, and involve the same people.

4. I believe that consolidation of the two cases would result in more economic pre-trial preparation, avoid needless duplication of discovery, court hearings, and trials.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19th day of February, 2008 in Berkeley, California.

/s/ Frances S. Kaminer

Frances S. Kaminer

## MEMORANDUM OF POINTS AND AUTHORITIES

### FACTUAL BACKGROUND

As is more fully stated below, consolidation of the two related cases is appropriate because both cases have been brought by the same plaintiffs, that is John F. Hutchens, Zamora Moton and Baby S.A., they arise out of the same events that occurred at Highland Hospital (Alameda County Medical Center, between the dates of November 4, 2005 through November 7, 2005. Furthermore, it is likely the same witnesses will testify in each case.

The complaint in each case alleges a violation of plaintiffs' Fourth and Fourteenth Amendment rights when Baby S.A. was wrongfully seized from his parents' custody, without a warrant or other court order and in the absence of imminent danger, shortly after birth in the Alameda County Medical Center (Highland Hospital) by Alameda County Social Services emergency response worker Rudolpho Hernandez, in conjunction with Alameda County Medical Center, and that the initial investigation by social services was negligently initiated by Alameda County Medical Center. The plaintiffs have alleged that there was a pattern and practice by Alameda County Social Services to seize children from their parents' custody without a warrant and in the absence of imminent danger of physical abuse, and that a pattern and practice on the part of Alameda County Medical Center exists whereby they act as the agents of Alameda County Social Services to deprive parents of the custody of their children without requiring a court order.

### LEGAL AUTHORITY

F.R. Civ. P., Rule 42(a)(2) states provides in pertinent part that:

- (a) If actions before the court involve a common question of law or fact, the court may
- (2) consolidate the actions.

The decision whether or not to consolidate actions rests within the sound discretion of the trial court. United States EPA v. City of Green Forest Ark.( 8<sup>th</sup> Cir. 1990) 921 F. 2d 1394,1402.

### CONCLUSION

This court has already determined that these cases are related, and they are proceeding before the same judge. Consolidating the two actions into one would likely effect a saving of judicial effort and other economies because both cases involve common questions of law and fact. Depositions, written discovery, settlement efforts, including allocation of damages to each party, court hearings, and the trial itself can be consolidated into a single proceeding, thereby avoiding duplication of discovery.

It is, therefore, respectfully requested that the court order these two cases to be consolidated.

Respectfully submitted

/s/ Frances S. Kaminer

Frances S Kaminer

*One of the Attorneys for Plaintiffs Hutchens and Baby S.A.*